

UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
2018 AUG 21 PM 12:28

Randall S. Krause

Plaintiff(s)

vs.

Case Number: 8:18-cv-00311

Metropolitan Entertainment & Convention Authority (MECA)

Defendant(s)

**SUR-REPLY**

In Document 13, MECA accuses Krause of trying to deceive the Court by using an ellipsis. MECA also repeats that its fake recycling program did not cause Krause to suffer an injury in fact. Again, Krause disagrees.

In Document 12, Krause quotes from page 9 of Exhibit A using an ellipsis. The full sentence that Krause quotes from reads: "All four of the factors set forth in that test are applicable to MECA such that it should be considered an agency, branch, or department of the City of Omaha." Exhibit A, p.9. The "test" the Attorney General is referring to is a functional equivalency test developed by the Supreme Court of Connecticut. The Nebraska Attorney General used the test to conclude that MECA was an arm of the City of Omaha. MECA argues that the Attorney General's conclusion can only be applied to whether MECA is subject to the Nebraska Public Records Act and the Nebraska Open Meetings Act. But the Supreme Court of Connecticut developed the test as a generic test to determine if an entity was a state actor; therefore it can be used to determine if MECA is a state actor under 42 U.S.C. § 1983.

MECA argues that Krause made his statement freely and the fact that MECA threw his recyclables away did not restrict his freedom. MECA's argument is like a dictator who says that "everyone is free in my country: they are free to say what they want and I am free to push them out of a window." People are not free if they get pushed out of windows. Krause is not free to speak if he gets penalized for what he says.

It is true that MECA did not prevent Krause from speaking. He made his statement. But he was penalized for what he said and is no longer free to speak in the same manner at TD Ameritrade Park. Therein lies the injury.

Certificate of Service

I certify that on August 21, 2018, I filed the foregoing Sur-Reply with the Clerk of the United States District Court for the District of Nebraska and the same was electronically transmitted by the Clerk to Brandon J. Crainer at bcrainer@fraserstryker.com, attorneys for defendant MECA, by CM/ECF.

Randall S. Krause

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